Supreme Court, U.S.
FILED
05-841 DEC 29 2005
OFFICE OF THE CLERK

NO. _____

In The Supreme Court of the United States

TEAMSTERS PENSION TRUST FUND
OF PHILADELPHIA AND VICINITY,

Petitioner,

v.

ALFRED DIGIACOMO,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

Neal Goldstein
Counsel of Record
Susan A. Murray
FREEDMAN & LORRY, P.C.
1601 Market Street
Second Floor
Philadelphia, PA 19103
(215) 925-8400

Counsel for Petitioner

THE LEX GROUP • 1108 East Main Street • Suite 1400 • Richmond, VA 23219
(804) 644-4419 • (800) 856-4419 • Fax: (804) 644-3660 • www.thelexgroup.com

QUESTION PRESENTED

Whether pension benefits accrued in years prior to ERISA's effective date may be forfeited under an employee benefit plan's break in service provisions then in effect?

LIST OF PARTIES TO THE PROCEEDINGS BELOW

The names of all parties in the court of appeals are: Alfred DiGiacomo, Teamsters Pension Trust Fund of Philadelphia and Vicinity.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF PARTIES TO THE PROCEEDINGS BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

INTRODUCTION 1

OPINIONS BELOW 1

JURISDICTION 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 6

I. THERE IS A CONFLICT AMONG THE CIRCUITS REGARDING THE TREATMENT OF FORFEITED ACCRUED BENEFITS RESULTING FROM A PRE-ERISA BREAK IN SERVICE 7

A. Seventh Circuit 9

B. Second Circuit.....11

II. THIRD CIRCUIT FAILED TO THOROUGHLY EXAMINE THE LANGUAGE, STRUCTURE AND PURPOSE OF THE VESTING AND ACCRUAL PROVISIONS IN ITS ANALYSIS.....13

III. CONGRESS EXPRESSLY PROVIDED FOR PROSPECTIVE APPLICATION OF ERISA'S PARTICIPATION, VESTING AND ACCRUAL REQUIREMENTS.....17

CONCLUSION.....21

APPENDIX

TABLE OF AUTHORITIES

PAGE

CASES

Boggs v. Boggs,
520 U.S. 833 (1997) 13

Central Laborers' Pension Fund v. Heinz,
541 U.S. 739 (2004) 8, 9

Dep't of Revenue of Oregon .v. ACF Industry, Inc.,
510 U.S. 332 (1994) 8

Egelhoff v. Egelhoff,
532 U.S. 141 (2001) 6

Fort Halifax Packing Co. v. Coyne,
482 U.S. 1 (1987) 6

Ingersoll-Rand Co. v. McClendon,
498 U.S. 133 (1990) 13

Jones v. UOP,
16 F.3d 141 (7th Cir. 1994) 9, 10, 11, 16

McClain v. Retail Food Employers Joint Pension Plan,
413 F.3d 582 (7th Cir. 2005), *cert. denied*,
____ U.S. ____ (2005) 10, 11

McDonald v. Pension Plan of the NYSA-ILA Pension Trust Fund,
320 F.3d 151 (2nd Cir. 2003) 11, 12

Tanzillo v. Local Union 617, International Brotherhood of Teamsters,
769 F.2d 140 (3d Cir. 1985) 18

Vallone v. CNA Financial Corp.,
375 G.3d 623 (7th Cir. 2004) 11

STATUTES

Internal Revenue Code
§ 411(b)(1)(D), 26 U.S.C. § 411(b)(1)(D) 21

28 U.S.C. §1254(1) 2

28 U.S.C. §1291 3

Employee Retirement Income
Security Act of 1974, 29 U.S.C. 1001 *et seq.* 2

§ 3(19),
29 U.S.C. § 1002(19) 9

§ 202, 29 U.S.C. 1052 ..... 12, 13

§ 202(b), 29 U.S.C. 1052(b) 6, 20

§ 202(b)(2),
29 U.S.C. § 1052(b)(2) 21

§ 202(b)(3),
29 U.S.C. § 1052(b)(3) 21

§ 203, 29 U.S.C. § 1053 .....*passim*

§ 203(b)(1)(F),
29 U.S.C. § 1053(b)(1)(F).....*passim*

§ 203(b)(3)(A),
29 U.S.C. § 1053(b)(3)(A) 21

§ 204, 29 U.S.C. § 1054 .....*passim*

§ 204(b)(1),
29 U.S.C. § 1054(b)(1) 15, 18

§ 204(b)(1)(D),
29 U.S.C. § 1054(b)(1)(D) .....*passim*

§ 204(b)(4)(A),
29 U.S.C. § 1054(b)(4)(A) 20

§ 211(b)(2),
29 U.S.C. § 1061(b)(2) 17

§ 211(e)(1)(A),
29 U.S.C. § 1061(e)(1)(A).....12

§ 211(e)(2)(A),
29 U.S.C. § 1061(e)(2)(A).....12

§ 502(e), 29 U.S.C. § 1132(e) 3

RULE

Fed. R. Civ. P. 12(b)(6).....6

REGULATION

Department of Labor Regulation
29 C.F.R. §2530.204-2(b) 20, 21

OTHER AUTHORITIES

H.R. CONF. REP. NO. 93-406 (1974)
reprinted in 1974 U.S.C.C.A.N. 5038-5165.....14, 15

1 Jeffrey D. Mamorsky,
Employee Benefits Handbook § 17:36 (2004) 16-17

120 CONG. REC. S15737
(daily ed. August 22, 1974)
(statement of Sen. Williams) 16

INTRODUCTION

This case concerns the interpretation and application of private pension plans' pre-ERISA break in service rules on which the circuits are deeply divided. The fundamental issue is whether it was the intent of Congress to have pension plan sponsors accrue pension benefits retroactively for hundreds of thousands, if not millions, of plan participants whose years of credited service had been cancelled due to the plan's pre-ERISA break in service rules or whether such retroactive accrual is required.

The purpose of ERISA was to provide a nationwide standard for administration of benefits in order to provide employees participating in pension programs with some level of certainty. In implementing this nationwide standard, the ERISA statute and the corresponding regulations from the Department of Treasury have exacted certain funding requirements for pension funds. With the split in circuits, there is no guidance to pension plans with pre-ERISA break in service provisions. Because of the serious financial implications and inequities to both pension plans and their participants that result, there is a need for this issue to be definitively and uniformly decided.

OPINIONS BELOW

The opinion in the Court of Appeals for the Third Circuit ("Third Circuit") is reported at 420 F.3d 220. App. at 1a-25a. The Petition for Rehearing En Banc was denied without opinion, in an

unpublished order issued on October 5, 2005. App. at 43a-44a. On November 15, 2005, the Third Circuit denied DiGiacomo's Motion for Attorneys' Fees, in an unpublisned opinion. App. 26a-32a. The opinion of the United States District Court for the Eastern District of Pennsylvania is unpublished.

JURISDICTION

The Third Circuit issued its order denying the Pension Fund's Petition for Rehearing En Banc on October 5, 2005. App. at 43a-44a. This Petition for a Writ of Certiorari is being timely filed within 90 days of that date. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*

STATEMENT OF THE CASE

This petition seeks review of a decision of the Third Circuit reversing and remanding a judgment of the United States District Court for the Eastern District of Pennsylvania (the "District Court"). The Third Circuit held that for accrual of benefit purposes, ERISA prevents pension plans from denying credit for pre-ERISA service time accrued prior to a break in service. Pet. App. at 17a. In his dissenting opinion, Judge Alito, averred that § 204, 29 U.S.C. § 1054 does not give an unconditional right to receive benefits and that "under the minimum vesting standards in § 203, the Plan was plainly

allowed to treat benefits accrued prior to 1972 as forfeitable upon a break in service". App. at 20a.

The District Court had subject matter jurisdiction over this case under 29 U.S.C. § 1132(e), which vests exclusive original jurisdiction over all controversies arising under the Employee Retirement Income Security Act of 1974 with the United State District Courts. The Third Circuit had jurisdiction over the appeal from the District Court's final order pursuant to 28 U.S.C. § 1291.

The material facts are straightforward and not in dispute. App. at 3a. Alfred DiGiacomo ("DiGiacomo") was a participant in the Teamsters Pension Trust Fund of Philadelphia and Vicinity's ("Pension Fund") pension plan. DiGiacomo worked for employers who were bound by collective bargaining agreements to contribute to the Pension Fund when DiGiacomo performed work covered under such collective bargaining agreements ("Covered Employment").

DiGiacomo worked in Covered Employment from 1960 through 1971, earning either a full or half year benefit service credit in each of those years. Between 1972 and 1977, DiGiacomo did not work in Covered Employment. Beginning in 1978, DiGiacomo once again worked in Covered Employment. DiGiacomo's benefit service credit earned for the years from 1960 through 1971 was forfeited by reason of the Break In Service provisions of the pension plan.